REMARKS

Allowance of this application is requested.

The undersigned is somewhat perplexed by the Examiner's requirement to amend the title of the subject application. Particularly, the Third Preliminary Amendment dated March 18, 2005 included a request that the title be amended precisely in the manner suggested by the Examiner. Please see in this regard the attached Exhibit A which is the amendment instruction of the Third Preliminary Amendment dated March 18, 2005 to revise the title which was printed from the USPTO's records via the PAIR system. The Examiner's cooperation to ensure that all amendment instructions to date have been entered into the official record will therefore be appreciated.

The dependency of Claim 22 has been corrected so it is now dependent from independent claim 12.

With respect to claim 25, while the Examiner is correct that claim 24 recites the step (i-1) and NOT step (i), claim 24 is ultimately dependent from claim 12 via intervening claims 22-23 which DOES recite step (i). Therefore, the step recited in claim 25 could occur before step (i), including before or after step (i-1). Withdrawal of the rejection advanced against claim 25 is therefore in order.

The only issue remaining to be resolved in this application are the Examiner's claim rejections under the judicially created doctrine of "obviousness-type" double patenting based on applicants' prior U.S. Patent No. 6,857,178 ("the '178 patent"). In response, applicants are enclosing herewith a Terminal Disclaimer which disclaims that portion of any patent issuing hereon which may extend beyond the expiration date of any patent issuing on the '178 patent. Additionally, the Terminal Disclaimer filed herewith also includes a provision that the patent issued hereon shall be enforceable

only for and during such period that legal title thereto is the same as the legal title to the '178 patent.

While applicant does not concur with the Examiner's position that the improvement sought to be patented herein is merely a matter of obvious choice or design as compared to the invention claimed in the '178 patent, applicant wishes to point out that, in situations such as this, the issue is not one of "obviousness", but rather one of "identity of invention." *In re Vogel*, 164 USPQ 619 (CCPA 1970), *In re Kaplan*, 229 USPQ 678 (Fed. Cir. 1986). The Court in *Vogel* set forth the test for identity of invention as whether the claims of one case could be literally infringed without literally infringing the claims of the other. It is quite apparent that one of the claims of one of the '178 patent and a claim of the present application could be infringed literally without infringing literally the claims of the other. Hence, there is no "identity of invention" so that the Terminal disclaimer enclosed herewith should, in any event, resolve the asserted issue of "double patenting".

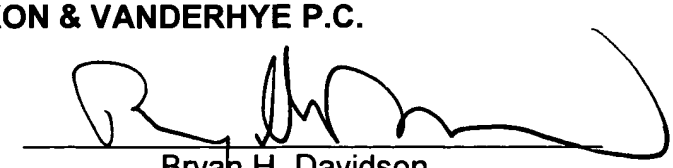
Every effort has been made to advance prosecution of this application to allowance. Therefore, in view of the amendments and remarks above, applicant suggests that all claims are in condition for allowance and Official Notice of the same is solicited.

Should any small matters remain outstanding, the Examiner is encouraged to telephone the Applicants' undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

An early and favorable reply on the merits is awaited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

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IN THE TITLE:

Please amend the title as follows:

METHODS OF MAKING UPHOLSTERY FABRIC TACK STRIPS ~~AND METHODS OF MAKING SAME~~

EXHIBIT
A